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FILED

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Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE D. RONALD HYDE, NO. 166.	VERIFIED ANSWER OF JUDGE D. RONALD HYDE TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS

Comes now the Honorable D. RONALD HYDE and pursuant to Rule 119 of the Rules of the Commission on Judicial Performance, admits, denies and alleges as follows in response to the first amended notice of formal proceedings now pending before the Commission:

COUNT ONE

Judge Hyde admits the allegations in Count One only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count One. In particular, Judge Hyde

specifically denies the allegation in Count One that he "asked a traffic clerk to obtain information from the Department of Motor Vehicles (DMV) regarding the identity of a driver that [Judge Hyde] said had cut [him] off."

This Count arose during Judge Hyde's morning commute to the courthouse. Judge Hyde rarely travels the freeway to work. However, on the occasion in question Judge Hyde was driving on the freeway and observed a driver operating his vehicle in a reckless and wanton manner so as to endanger other people. (See, e.g., Vehicle Code section 23103.) The individual was driving at excessive speeds and erratically weaving in and out of traffic without signaling. Based on these observations, Judge Hyde had a very legitimate concern for the safety of the other drivers on the road and for his own safety.

Immediately upon arriving at the courthouse, Judge Hyde walked to the clerk's office and requested a DMV report on the driver to obtain the driver's address. Judge Hyde's purpose in requesting this information was to determine if the driver had a bad record. If the record was bad Judge Hyde intended to file a formal report with the police. If the record was clean a cautionary warning would be requested. The purpose of obtaining the DMV report was solely to report the matter to the authorities and to protect the public from the reckless driving of this individual. Judge Hyde did not represent to the clerk that this information was necessary for any adjudicative or administrative function. Any private citizen can register a formal complaint to the police regarding someone else's driving. Judge

Hyde was concerned that merely because of his stature a formal complaint would result in action by the District Attorney.

The incident was then reported promptly to the Pleasanton Police Department by Judge Hyde with a request that the authorities issue a cautionary warning. Judge Hyde's intention was at all times to protect the public. The information was disclosed only to the Pleasanton Police Department and was not used for any other purpose.

Judge Hyde admits the allegation of Count One that he entered into a stipulated public censure with the Commission on Judicial Performance in 1996, the very terms of which are a matter of public record.

COUNT TWO

Judge Hyde admits the allegations in Count Two only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Two. In particular, Judge Hyde flatly denies the allegation of Count Two that he at any time made a remark about a "former court employee being engaged in a blow job in the courthouse parking lot."

Judge Hyde admits that in late November 2000, Judge Hyde along with several court personal, were discussing the old courthouse in Livermore at a holiday party at the end of the day in the courthouse lunchroom. It was near Thanksgiving, so food was set out for everyone to enjoy. Several strange and wild incidents regarding the old Livermore courthouse were being told. Some of these stories included a humorous incident where all of Judge Hyde's books were turned upside down. Another story involved a

district attorney who returned from vacation to find his office filled with balloons. When the balloons were removed, all of the furniture was missing from the district attorney's office. Another story pertained to a jury being convened in the parking lot because no rooms were available.

One of the true stories that was discussed by several of the individuals attending the party was that a certain unnamed court administrator was caught once with another individual in a male-male act of fellatio in the parking lot of the old courthouse. Judge Hyde confirmed that the story was not just a rumor floating around about the old courthouse, but was a true story. It was related that one judge wanted to fire the individual while another judge did not. Ultimately, the individual was not fired. The story was just one of many that day that was being recounted. The story was not told in a malicious fashion nor was it meant to be offensive and at the time it did not appear that anyone was offended.

Judge Hyde admits the allegation of Count Two that he entered into a stipulated public censure with the Commission on Judicial Performance in 1996, the very terms of which are a matter of public record.

COUNT THREE

Judge Hyde admits the allegations in Count Three only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Three.

When the present courthouse opened in 1987 Judge Hyde started the night court sessions. These small claims cases are heard once a month during the evening. Typically, all the judges in

Pleasanton share responsibility for the small claims calendar. There is also a small claims panel of attorneys that are available to handle the small claims calendar in the event there is a conflict or if the regularly scheduled judge is unavailable to hear the calendar. The court relies very heavily on this small claims judge pro tem panel for assistance.

Judge Hyde admits that his daughter, Suzanne Hyde, was involved in a rear-end motor vehicle accident and that she filed suit against the other driver in small claims court in Pleasanton. Judge Hyde denies the inference, if any can be drawn, that the case was filed in Pleasanton because Judge Hyde is assigned in Pleasanton. The case was properly venued in Pleasanton because the accident occurred in Pleasanton. Judge Hyde admits that the case was filed on December 21, 2000 as case number 2000-100494 and set for night court on January 23, 2001.

Suzanne Hyde's claim involved a low speed auto versus auto accident in a parking lot. The defendant in the case struck Ms. Hyde's vehicle from the rear causing minor damage to Ms. Hyde's vehicle. The facts of the case were not in dispute and the defendant admitted liability.

Judge Hyde admits filing the small claims complaint for Suzanne Hyde, but he denies asking any court personnel to serve the complaint on her behalf. Judge Hyde left the papers along with the appropriate fee for the process server to pick up, as would be the case with any other small claims complaint filed by any other litigant.

Suzanne Hyde's case was set for January 23rd, 2001. Judge Hyde had been previously set to preside over the small claims calendar on January 23rd. Judge Hyde recalls that sometime in early January 2001 he was advised of the conflict and requested the matter remain on calendar for that night. The reason he did so was simple: the other party had previously acknowledged culpability; Suzanne Hyde was living and working in Marin County and it was difficult for her to have the time changed; and the defendant had been evading service. It was Judge Hyde's intention on that date to call for a judge pro tem but he became busy and forgot about the matter, totally. Late in the afternoon of January 23, 2001, as Judge Hyde passed through the civil division to get his mail, one of the clerk's reminded him of the evening court session and that Suzanne Hyde's matter was still on the calendar. Because there was an obvious conflict for Judge Hyde to preside over the matter involving his daughter, it was requested that a panel attorney handle the small claims calendar that evening. Typically, when there is a conflict for a judge to hear a matter, a judge pro tem is appointed to resolve the conflict rather than moving the matter to the next month's calendar. Again, this is a standard practice in the Pleasanton small claims court.

Judge Hyde admits that he requested that the court clerk maintain the previously established January 23rd trial date, in part because moving the court date due to a court conflict would unfairly punish the litigant, who then would have to re-serve the defendant, and it would also delay resolution of the case.

Judge Hyde took the affirmative step of contacting attorney John Harding and arranging for Harding to hear the entire small claims calendar for the evening on short notice. John Harding is well known for his honesty and integrity. This is not unusual as Judge Hyde has been asked to secure the services of a pro tem attorney for the small claims court many times in the past and has done so. Judge Hyde merely told Mr. Harding he had an undisclosed conflict and asked if Mr. Harding could handle the calendar on short notice.

Attorney John Harding was and is on the Alameda Superior Court Small Claims pro tem panel. John Harding is an experienced and respected attorney who is well-qualified to preside over small claims matters. He had no business or financial dealings with Judge Hyde or Suzanne Hyde. Mr. Harding was not advised that Suzanne Hyde's matter was on calendar for that evening prior to being appointed. Judge Hyde did not have any cases pending in which Harding was involved and has not had any business or financial dealings with Harding prior to or subsequent to the small claims hearing. The small claims court staff regularly reports that Mr. Harding is one of the best small claims judge pro temps. Mr. Harding has no business or personal relationship with Suzanne Hyde.

Due to Judge Hyde's conflict, Mr. Harding heard the entire small claims calendar, not just Suzanne Hyde's matter. Moreover, the conflict was resolved in accordance with the usual custom and practice of the Superior Court in resolving small claims conflicts, specifically, assignment to a local attorney on the panel to act as judge pro tem.

COUNT FOUR

Judge Hyde admits the allegations in Count Four only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Four.

Judge Hyde admits that he sentenced Eddie Streeter on a charge of misdemeanor injury to a child on June 14, 2000 in case number 94311 and that Mr. Streeter's sentence included three years of probation.

Judge Hyde had been the primary judge in Mr. Streeter's case and had presided over most, if not all, of the status conferences relating to this case until June of 2001. On June 13th, 2001, Judge Walker, while Judge Hyde was on vacation, granted an oral motion by Streeter's counsel to terminate Mr. Streeter's probation and to dismiss the case pursuant to Penal Code section 1203.4. In Pleasanton, it is common practice for a judge to take any appropriate action on a case, without regard to whether the matter had been previously handled by another judge. The district attorney was present when the motion was made and consented to the motion.

The court in Pleasanton has a liberal policy of allowing cases to be "added" to the court calendar as a part of making the courts more accessible to the public. A defendant can request that his case be added to the court calendar at the criminal clerk's window at the courthouse. Alternatively, at the end of each court session, it is Judge Hyde's practice to ask if anyone is in the courtroom who believes that their case should have been called, but was not called. In the event that someone indicates that their case was not called,

then Judge Hyde instructs the individual to make a request to have the case added to the calendar and to have the file brought into the courtroom. The case will then be heard.

Judge Hyde is informed and believes that Mr. Streeter prepared a letter addressed to Judge Hyde which was presented to Judge Walker at the time Mr. Streeter's attorney made an oral motion to terminate probation on June 13th. It is Judge Hyde's belief that Mr. Streeter expected Judge Hyde to preside over the June 13, 2001 hearing and that is why the letter was addressed to him. Judge Hyde denies the allegation that Mr. Street's letter "came to the Pleasanton court" as it is misleading. Judge Hyde is informed and believes, and the transcript of the hearing reflects, that the letter was submitted by Mr. Streeter's attorney to Judge Walker in support of Mr. Streeter's motion to terminate probation. Once Judge Walker terminated probation, the letter was then provided to Judge Hyde by Judge Walker along with Mr. Streeter's court file, which included the minute order indicating that probation had been terminated.

When Judge Hyde returned from vacation and received Mr. Streeter's letter, Judge Hyde was really pleased because Mr. Streeter had been a model probationer, had done some extraordinary things while on probation and truly was a candidate for an early termination. Judge Hyde wanted Mr. Streeter to know that he was pleased that Mr. Streeter's life had turned around with respect to this relationship with his son. Judge Hyde has a long standing practice that whenever individuals do well on probation, whether it be through education, rehabilitation or whatever, that he will make an extra effort to congratulate them on their achievement.

Judge Hyde denies terminating Mr. Streeter's probation based solely upon Mr. Streeter's letter. Instead, Mr. Streeter's probation had already been terminated by Judge Walker at the time Judge Hyde received Mr. Streeter's case file. Judge Hyde denies the allegation that he believed he was taking judicial action when he responded to Mr. Streeter's letter. Judge Hyde merely wanted to ensure that the proper forms were in Mr. Streeter's file to reflect Judge Walker's order terminating probation.

Judge Hyde did write Mr. Streeter on July 5th, 2001. The reason for this correspondence was to congratulate Mr. Streeter for fulfilling all of the obligations of his probation and for turning his life around. Judge Hyde had every intention to copy the defense attorney and the district attorney on the correspondence, but inadvertently forgot to include the attorneys on the copy list. After mailing the letter, Judge Hyde realized the omission and verbally advised both Mr. Duren (the district attorney) and Mr. Gorelick (the defense attorney) of the contents of his letter to Mr. Streeter. Neither attorney indicated that there was any objection to the communication.

On July 11th 2001, Mr. Streeter completed and submitted a Penal Code section 1203.4 form and sent Judge Hyde a "thank you" letter. The reason the form was submitted was simply to insure that the court file clearly reflected that Mr. Streeter's probation was in fact terminated on June 13th, 2001. Judge Hyde attempts to extend his congratulations to individuals to who successfully complete probation in open court. This is appreciated by the defendants and it gives everyone else in the courtroom something to think about. Mr.

Streeter was present in court on July 11, 2000 and Judge Hyde took the opportunity to formalize what had been done previously and to give Mr. Streeter the proper credit for all he had done.

COUNT FIVE

Judge Hyde admits the allegations in Count Five only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Five.

Judge Hyde admits that defendant Karissa Kernan was sentenced by Judge Walker on a misdemeanor charge of alcohol related reckless driving in July 2000. Judge Hyde further admits that her sentence included three years of court probation.

Karissa Marie Kernan is the daughter of Patrick Kernan. Patrick Kernan is an experienced local attorney who is very active and well-known in the Pleasanton community. He is the current President of the School Board. Mr. Kernan is also one of Pleasanton's most reliable pro-tem judges. Over the years, Judge Hyde has been involved in community projects with Patrick Kernan, such as the ValleyCare Foundation Board and the California Wine Auction. It was primarily through this activity that Judge Hyde became acquainted with Mr. Kernan. Judge Hyde denies having any type of social relationship with Mr. Kernan and does not consider Mr. Kernan to be a close friend. Judge Hyde has never had a business or professional relationship of any kind with Ms. Kernan. Judge Hyde does not recall ever meeting Ms. Kernan prior to the incident. Judge Hyde has never discussed Ms. Kernan's case with Patrick Kernan.

This matter arose when Ms. Kernan contacted Judge Hyde by telephone at the courthouse. Ms. Kernan stated that she was going into the armed services, but could not enlist while on probation. Judge Hyde promptly gave Ms. Kernan his customary admonishment, which is that he could not discuss her case outside of court, i.e., ex parte. Judge Hyde told Ms. Kernan that if she wanted the matter heard, then she could go to the criminal clerk's window and request that the case be added to the master calendar.

In the absence of very unusual circumstances, judges in Pleasanton regularly handle cases that are added on to the court calendar without regard to what a prior judge did in the case. Unless the file indicates that a particular judge is doing something special with the case, then any other judge in Pleasanton is free to handle the matter. Ms. Kernan's file contained no such indication of special handling.

Judge Hyde did terminate Ms. Kernan's probation, however, Judge Hyde denies taking any judicial action based upon an ex parte communication with Ms. Kernan. First of all, there was never any improper ex parte communication with Ms. Kernan. Ms. Kernan requested that Judge Hyde consider an aspect of her case on the telephone. Judge Hyde promptly interrupted Ms. Kernan and advised her that he could not speak with her about her case outside of court. Once the case was properly added to the court calendar, Judge Hyde took judicial action because Ms. Kernan had completed everything that was required of her and, notably, the district attorney had no objection to the early termination of probation. The record of the hearing is illustrative:

> The Court: [Calling] Karissa Marie Kernan. What can I do for you?
>
> The Defendant: I'm trying to waive my probation to get into the military in March.
>
> The Court: In March?
>
> The Defendant: Yes.
>
> The Court: So you don't - - you've done everything you're supposed to do?
>
> The Defendant: Completed the –
>
> The Court: Why can't we do it in March?
>
> The Defendant: Well, I need to get clearance in order for them to enlist me.
>
> The Court: Which service?
>
> The Defendant: Air Force.
>
> The Court: you're going in the Air Force. That's okay.
>
> The Bailiff: Good.
>
> The Court: People have any objection?
>
> Mr. Ford: No, your honor.
>
> The Court: It was a .11 DUI.
>
> Mr. Ford: Not at all.
>
> The Court: Probation is modified and terminated on the Court's own motion. Have a seat and we'll give you something to take to the people. Good luck. You realize if you get in any trouble between now and then, you're going to be over there.

It is Judge Hyde's standard practice, and an allowable exercise of his judicial discretion, to terminate probation on an early basis so long as the defendant can demonstrate that he or she has complied with all required terms of probation. Furthermore,

terminating probation on an early basis (once the terms of probation have been satisfied), so that a young person can enter the military is customary among all the judges in Pleasanton.

COUNT SIX

Judge Hyde admits the allegations in Count Six only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Six.

Judge Hyde admits the allegation of Count Six that he presided over the arraignment calendar on August 24, 2001 and that defendant Beau Dempsey, case number 99961, was scheduled for arraignment on a misdemeanor domestic violence charge on that day.

Judge Hyde has spent the majority of his nineteen years on the bench in the criminal arraignment department. The criminal arraignment department is a high volume, fast-paced and sometime high-pressure venue. On average, Judge Hyde and his staff handle between 80 to 125 criminal cases a day.

Mr. Dempsey appeared in court that day on charges of domestic violence against his wife. He was already on felony probation for the same offense in Contra Costa County. Mr. Dempsey was, and probably remains, a very angry and violent young man.

During the proceedings, Mr. Dempsey was disruptive from the outset. He was repeatedly advised by the deputy to be seated and remain quiet. Mr. Dempsey chose to ignore these admonitions. Later, Mr. Dempsey made a very threatening throat-cutting gesture toward his wife. This was done in the plain view of everyone in

court. Based on this criminally disruptive conduct, Judge Hyde had Dempsey removed from the courtroom and increased his bail because of the clear life-threatening danger he posed to the victim.

It is within the court's discretion to raise the bail of a defendant where there is a public safety issue or there is clear and convincing evidence that the safety of the victim would be compromised with a lower bail. Notably, defense counsel did not object to bail being raised.

After the calendar was completed, Judge Hyde encountered Dempsey's wife in the courthouse hallway. Judge's Hyde's chambers are on the second floor of the courthouse and his courtroom is on the first floor. It is necessary for Judge Hyde to use the public corridor to go from his courtroom to his chambers. It is not infrequent that he encounters litigants in the corridor and the litigants frequently ask Judge Hyde questions. During this particular instance, Dempsey's wife was in the process of filing dissolution papers and asked Judge Hyde how to serve Dempsey while he was in jail. Judge Hyde replied that he did not know what the process was, but advised that his deputy might know. Upon being told of the situation by Judge Hyde and Ms. Dempsey, the deputy took the dissolution papers and had Mr. Dempsey served while in custody. This was not done at Judge Hyde's request, but was rather the deputy's suggested approach based on his experience. Judge Hyde's conversation with Ms. Dempsey did not involve any of the pending allegations of the misdemeanor domestic violence charge against Mr. Dempsey. Judge Hyde denies the allegation that he had any improper ex parte contact with Ms. Dempsey.

Judge Hyde further denies asking for an expedited fee waiver for Ms. Dempsey. Judge Hyde did request that Commissioner Foland return the fee waiver to Ms. Dempsey once it was executed so that the defendant could be served while in Pleasanton per the request of Ms. Dempsey.

COUNT SEVEN

Judge Hyde admits the allegations in Count Seven only as set forth below. Judge Hyde otherwise denies each and every one of the allegations set forth in Count Seven.

On November 12th, 2001, Christopher Plute and Nicole Araiza were arrested based upon an informant's tip that Plute was selling drugs. Plute and Araiza were arrested while in Plute's vehicle. The arresting officer found 172 grams of methamphetamine and a loaded .45 caliber handgun with a round in the chamber hidden in Plute's car. During a subsequent search of Araiza's apartment, the arresting officer found another 128 grams of methamphetamine, a gram scale, a loaded .38 caliber handgun with a round in the chamber and several thousand dollars in cash. At the time of the arrest, Plute was on active probation for a previous narcotics violation.

Both defendants appeared in front of Judge Hyde on November 14th, 2002. Pursuant to Penal Code section 1275, Judge Hyde set the bail for each defendant to $350,000 based upon the fact that each defendant was an armed and potentially dangerous methamphetamine dealer.

In determining an appropriate bail, Penal Code section 1275 states that the Court "shall take into consideration the protection of

the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration."

Judge Hyde's decision to set bail in the amount of $350,000 was a permissible exercise of his discretion given that both defendants were armed, in possession of a very large quantity of methamphetamine (approximately 300 grams), and were probably selling the drug to the public. Moreover, Plute had a criminal history of narcotics violations and was on active probation at the time of his arrest. These two individuals were potentially very dangerous to public safety.

Defendant Araiza's court file does reflect that the public defender representing her filed a Code of Civil Procedure section 170.6 challenge against Judge Hyde on November 15th, 2001. Subsequently, a Penal Code section 1275 hearing occurred on November 16th, 2001 before Judge Walker and Araiza's bail was reduced to $60,000. However, after being disqualified, Judge Hyde has no recollection of making any statement to Judge Walker that

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/ / / / /

Judge Walker should back him up on the case as alleged in the First Amended Notice of Formal Proceedings.

Dated: November 4, 2002

MURPHY, PEARSON, BRADLEY & FEENEY

By _____

James A. Murphy
Attorneys for THE HONORABLE D. RONALD HYDE

VERIFICATION

I, D. RONALD HYDE, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 11-4-02

D. RONALD HYDE

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CERTIFICATE OF SERVICE

I, Debbie Smith, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 4, 2002, I served the following documents on the parties in the within action:

VERIFIED ANSWER OF JUDGE D. RONALD HYDE TO NOTICE OF FORMAL PROCEEDINGS

BY HAND: The above-described document will be placed in a sealed envelope which will be hand-delivered on this same date by SILVER BULLET MESSENGER SERVICE, addressed as follows:

Jack Coyle
Office of Trial Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on November 4, 2002.

By: Debbie Smith
Debbie Smith